IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 526 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

---

ARTIBEN SASHANKBHAI VASA

Versus

SASHANKBHAI PRAFULCHANDRA VASA

---

Appearance:

1. Appeal from Order No. 526 of 1999

MR SH SANJANWALLA, SR. ADVOCATE with
MR HRIDAY BUCH for Petitioner No. 1-2
MR JD AJMERA for Respondent No. 1-5

---

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 20/09/2001

ORAL JUDGEMENT

#. The appellants-plaintiffs have challenged in this appeal the impugned order dated 15.9.1999 passed by the

learned Civil Judge (S.D.), Valsad in Special Civil Suit No.159 of 1999 whereby the learned Judge returned plaint to the plaintiffs for presenting the same before the court which has jurisdiction, as according to him, he had no jurisdiction to try the suit for damages and maintenance.

It is a brief order, therefore, I would like to reproduce the same which is as under :-

#. Thus, the learned judge held that provisions of Section 20(c) Civil Procedure Code (hereinafter referred to as "CPC") would be applicable and provisions of Section 19 CPC would not be applicable as the plaintiffs filed suit against the defendants for damages and maintenance. The suit can be filed in a case where marriage took place. Looking to the averments made in the plaint, nowhere it appears that the marriage took place between the parties in the jurisdiction of the court and deliberately the plaintiff has suppressed the fact regarding her marriage with the defendant No.1. Reading the plaint it is clear that father of the plaintiff is staying at Rajkot and she has stayed at Rajkot. Not only that her first daughter was born at Rajkot. Thus, it can be easily inferred that her marriage took place at Rajkot. When the marriage has not taken place in the jurisdiction of his court, then he will have no jurisdiction to try and, therefore, the suit was not maintainable and under the provisions of Order 7 Rule 10 CPC, the plaint has to be returned to the plaintiff and accordingly it was returned.

#. Learned counsel Mr.Sanjanwala and Mr.Hriday Buch for appellants vehemently submitted that it was a suit for damages and maintenance filed by the plaintiffs at Vapi

where desertion took place and wrong was committed by the defendants, therefore, the leaned Judge was wrong in holding that provisions of Section 20(c) CPC would apply and not Section 19. It was submitted that the learned Judge passed the impugned order without extending the opportunity of hearing to counsel for the plaintiffs, therefore, the impugned order is in violation of principles of natural justice and liable to be set aside. It was also submitted that marriage may not have taken place at Vapi where the suit was filed but part of cause of action viz. torture and harassment and desertion of the plaintiffs was at Vapi and, therefore, Vapi court would have jurisdiction under Section 19 CPC. Reliance was placed upon the judgment of this court in case of P.P.Prabhakaran Vs. Medical Officer-in-Charge reported in XXV(1) GLR 706 wherein the learned single judge of this court has considered the judgment of Bombay High Court in case of State of Maharashtra Vs. Sarvodaya Industries reported in AIR 1975 Bombay 197. Reliance was placed also on the judgment of Division Bench of the Calcutta High Court in case of Smt.Sheela Adhikari Vs. Rabindra Nath Adhikari reported in AIR 1988 Cal. 273. Lastly, reliance was placed upon judgment of Madras High Court in case of Ramanujulu Vs. Shiva reported in 1955 1 KLJ 397.

#. As against that learned counsel Shri Ajmera appearing for the respondents-defendants vehemently submitted that in the instant case not only the marriage between the parties took place at Rajkot but the plaintiff gave birth to a female child at Rajkot, desertion was taken place at Jamnagar and not at Vapi. Merely because her parents took away her to Vapi and since then she was staying at Vapi would not confer any jurisdiction to the Vapi Court. He submitted that when no wrong was committed within the jurisdiction of Vapi Court, then the court at Vapi obviously would have no jurisdiction and the learned Judge has rightly returned the plaint. He submitted that the plaintiffs can file suit and present their plaint either at Jamnagar or Rajkot but not at Vapi.

#. Mr.Ajmera further submitted that none of the aforesaid judgments cited by the learned counsel for the appellants-plaintiffs will have no application to the facts of the present case. He relied upon the Hon'ble Supreme Court's judgment in case of Subodh Kumar Gupta Vs. Shrikant Gupta reported in (1993) 4 SCC 1 and submitted that merely because the plaintiffs were staying at Vapi that would not be sufficient to invoke jurisdiction of Valsad court for suit which they have filed for damages and maintenance.

#. Before dealing with the aforesaid contentions advanced by the learned counsel for the parties, I would like to reproduce Section 19 CPC, which reads as under :-

"Sec.19. Suits for compensation for wrongs to person or movables- Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the opinion of the plaintiff in either of the said Courts".

#. Now, I will narrate few important and relevant facts mentioned in the plaint by the plaintiff which are as under :-

Plaintiff No.1-Smt.Artiben-appellant-Plaintiff No.1 is wife of respondent No.1-Shri Sashankbhai Prafulchandra Vasa, who is an advocate practising on Income Tax. His father i.e. the respondent-Defendant No.2-Prafulchandra Kanjibhai Vasa was initially a Public Prosecutor and later on started practising on Income tax side. The appellant-plaintiff No.1 got engaged with respondent-defendant No.1 on 18.5.1991 and, thereafter they got married on 5.7.1991. The appellant plaintiff No.1 is the only daughter of her parents. She gave birth to female child in 1995-minor Dhwani, who is appellant-plaintiff No.2 at Rajkot. As per the averments made in the plaint immediately after engagement, demand of dowry was made by the defendant No.1 by way of luxurious flats etc. from the appellant-plaintiff No.1 and not satisfying by those demands there was a continuous torture caused to her by the defendants. When she became pregnant in 1994 her mother-in-law forcibly done sonography and when she came to know that female child was there then physical and mental cruelty was meted to her. Serious allegations are made in the plaint that the defendant No.1 came with divorce papers and asked her to sign on it which she refused and thereupon rumours were spread by her husband that plaintiff No.1-Artiben is not of good character and, therefore, he wanted to take divorce from her. After birth of plaintiff No.2-Dhwani she was not properly looked after by the defendants, therefore, she was forced to stay at Vapi. During that period defendant No.1 has got married with another women and he is staying by way of `Maitri Karar'. Because of that relation one child is also born.

Time and again attempts were made to get divorce from her which she was not willing to give, therefore, continuously she was tortured at Vapi by her husband and other defendants while coming frequently to Vapi. She was deserted in January, 1995 and since then she was staying with her father and from April, 1996 she is staying with her father and brother at Vapi. According to her, cause of action arose last during 17th/18th/19th January, 1998 when the defendant No.1 came to Vapi for the purpose of divorce. The defendant No.1 and and his father are multimillionaires, therefore, she has claimed damages in sum of Rs.70,00,000/= and Rs.10,00,000/= by way of maintenance. Thus, in all Rs.82,60,000/= was claimed by way of damages and maintenance.

#. Thus, from the averments made in the plaint by the plaintiffs, it is clear that if not fully then atleast part of cause of action arose at Vapi. It was lastly when she was staying at Vapi since March, 1996. After desertion she was continuously tortured at Vapi by the defendants. Thus, in my considered opinion marriage or desertion would not be sufficient to dislodge her case that the cause of action arose at Vapi. The fact remains that without hearing the counsel for the plaintiffs, the learned Judge returned the plaint under Order 7 Rule 10 of CPC to the plaintiffs. It is stated in the plaint that she was continuously tortured at Vapi after March, 1996, till the filing of the suit, therefore, the court would have jurisdiction.

In my considered opinion whether the plaintiffs had disclosed about her marriage at Rajkot or not is hardly material. The learned Judge ought not have gone on presumption and return the plaint on the ground that marriage must have taken place at Rajkot, therefore, he will have no jurisdiction to try the suit.

#. I have earlier reproduced Section 19 CPC, which clearly states that where a suit is for compensation for wrong action done within the local limits of the jurisdiction of the Court, then that court will have jurisdiction. Thus, in my considered opinion the learned Judge had jurisdiction to try the suit.

In view of the above discussion this appeal is allowed. The impugned order passed by the learned judge returning the plaint to the plaintiff on the ground that he has no jurisdiction is hereby quashed and set aside. Now, the learned Judge shall proceed with the suit and decide the same as early as possible after hearing both the parties. However, there shall be no order as to

costs.

At this stage it was pointed by learned counsel Shri Buch for the appellant that while issuing notice this court has directed the appellants to deposit Rs.5,000/=. The said amount shall be handed over to them forthwith.

Civil Application No.12368 of 1999 is also disposed of as the main Appeal from Order is allowed.

(B.J.Shethna, J.)

*Pvv